

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LINDA McGARR,

Plaintiff,

-against-

CITY OF PEEKSKILL, WESTCHESTER
COUNTY, DAVID LEVINE, THOMAS
McINTYRE, WALTER BROVARSKI, EUGENE
TUMOLO, JOHN AND JANE DOE
SUPERVISORS, DANIEL STEPHENS, LOUIS
ROH, and MILLARD HYLAND,

Defendants.

-----X

**ANSWER TO FIRST
AMENDED COMPLAINT
AND CROSS-CLAIMS**

Docket No.
07 Civ. 9488 (KMK)

Defendants CITY OF PEEKSKILL, DAVID LEVINE, THOMAS McIntYRE, and
WALTER BROVARSKY, by their attorneys, MIRANDA SOKOLOFF SAMBURSKY
SLONE VERVENIOTIS, LLP, as and for their answer to the complaint in the above-
captioned action, sets forth as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of
the allegations contained in ¶ “1” of the complaint.
2. Deny the allegations contained in ¶ “2” of the complaint.
3. Deny the allegations contained in ¶ “3” of the complaint.
4. Deny the allegations contained in ¶ “4” of the complaint.
5. Deny the allegations contained in ¶ “5” of the complaint.
6. Deny the allegations contained in ¶ “6” of the complaint.
7. Deny the allegations contained in ¶ “7” of the complaint.
8. Deny the allegations contained in ¶ “8” of the complaint.

9. Deny the allegations contained in ¶ “9” of the complaint.
10. Deny the allegations contained in ¶ “10” of the complaint, and refer all questions of law to the Court for adjudication.
11. Deny the allegations contained in ¶ “11” of the complaint, and refer all questions of law to the Court for adjudication.
12. Deny the allegations contained in ¶ “12” of the complaint, and refer all questions of law to the Court for adjudication.
13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “13” of the complaint.
14. Deny the allegations contained in ¶ “14” of the complaint, and refer all questions of law to the Court for adjudication.
15. Deny the allegations contained in ¶ “15” of the complaint, and refer all questions of law to the Court for adjudication.
16. Deny the allegations contained in ¶ “16” of the complaint.
17. Deny the allegations contained in ¶ “17” of the complaint.
18. Deny the allegations contained in ¶ “18” of the complaint.
19. Deny the allegations contained in ¶ “19” of the complaint.
20. Deny the allegations contained in ¶ “20” of the complaint.
21. Deny the allegations contained in ¶ “21” of the complaint, and refer all questions of law to the Court for adjudication.
22. Deny the allegations contained in ¶ “22” of the complaint, and refer all questions of law to the Court for adjudication.

23. Deny the allegations contained in ¶ “23” of the complaint, and refer all questions of law to the Court for adjudication.

24. Deny the allegations contained in ¶ “24” of the complaint, and refer all questions of law to the Court for adjudication.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “25” of the complaint, except admit that the family of A.C. contacted the Peekskill Police Department and reported her missing.

26. Deny the allegations contained in ¶ “26” of the complaint.

27. Deny the allegations contained in ¶ “27” of the complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “28” of the complaint.

29. Deny the allegations contained in ¶ “29” of the complaint.

30. Deny the allegations contained in ¶ “30” of the complaint.

31. Deny the allegations contained in ¶ “31” of the complaint.

32. Deny the allegations contained in ¶ “32” of the complaint.

33. Deny the allegations contained in ¶ “33” of the complaint.

34. Deny the allegations contained in ¶ “34” of the complaint.

35. Deny the allegations contained in ¶ “35” of the complaint.

36. Deny the allegations contained in ¶ “36” of the complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “37” of the complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “38” of the complaint.

39. Deny the allegations contained in ¶ “39” of the complaint.
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41. Deny the allegations contained in ¶ “41” of the complaint.
42. Deny the allegations contained in ¶ “42” of the complaint.
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47. Deny the allegations contained in ¶ “47” of the complaint.
48. Deny the allegations contained in ¶ “48” of the complaint.
49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “49” of the complaint.
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60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “60” of the complaint.
61. Deny the allegations contained in ¶ “61” of the complaint.
62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “62” of the complaint.
63. Deny the allegations contained in ¶ “63” of the complaint.
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70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “70” of the complaint.
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73. Deny the allegations contained in ¶ “73” of the complaint.
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- 76. Deny the allegations contained in ¶ “76” of the complaint.
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- 91. Deny the allegations contained in ¶ “91” of the complaint.
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- 93. Deny the allegations contained in ¶ “93” of the complaint.
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- 96. Deny the allegations contained in ¶ “96” of the complaint.
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- 99. Deny the allegations contained in ¶ “99” of the complaint.
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- 114. Deny the allegations contained in ¶ “114” of the complaint.
- 115. Deny the allegations contained in ¶ “115” of the complaint.
- 116. Deny the allegations contained in ¶ “116” of the complaint.
- 117. Deny the allegations contained in ¶ “117” of the complaint.
- 118. Deny the allegations contained in ¶ “118” of the complaint.
- 119. Deny the allegations contained in ¶ “119” of the complaint.
- 120. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “120” of the complaint.

121. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “121” of the complaint.

122. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “122” of the complaint.

123. Deny the allegations contained in ¶ “123” of the complaint.

124. Deny the allegations contained in ¶ “124” of the complaint.

125. Deny the allegations contained in ¶ “125” of the complaint.

126. Deny the allegations contained in ¶ “126” of the complaint.

127. Deny the allegations contained in ¶ “127” of the complaint.

128. Deny the allegations contained in ¶ “128” of the complaint.

129. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “129” of the complaint.

130. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “130” of the complaint.

131. Deny the allegations contained in ¶ “131” of the complaint.

132. Deny the allegations contained in ¶ “132” of the complaint.

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134. Deny the allegations contained in ¶ “134” of the complaint.

135. Deny the allegations contained in ¶ “135” of the complaint.

136. Deny the allegations contained in ¶ “136” of the complaint.

137. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “137” of the complaint.

138. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “138” of the complaint.

139. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “139” of the complaint.

140. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “140” of the complaint.

141. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “141” of the complaint.

142. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “142” of the complaint.

143. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “143” of the complaint.

144. Deny the allegations contained in ¶ “144” of the complaint.

145. Deny the allegations contained in ¶ “145” of the complaint.

146. Deny the allegations contained in ¶ “146” of the complaint.

147. Deny the allegations contained in ¶ “147” of the complaint.

148. Deny the allegations contained in ¶ “148” of the complaint, and refer all questions of law to the Court for adjudication.

149. Deny the allegations contained in ¶ “149” of the complaint, and refer all questions of law to the Court for adjudication.

150. Deny the allegations contained in ¶ “150” of the complaint, and refer all questions of law to the Court for adjudication.

151. Deny the allegations contained in ¶ “151” of the complaint, and refer all questions of law to the Court for adjudication.

152. Deny the allegations contained in ¶ “152” of the complaint.

153. Deny the allegations contained in ¶ “153” of the complaint, and refer all questions of law to the Court for adjudication.

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155. Deny the allegations contained in ¶ “155” of the complaint.

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158. Deny the allegations contained in ¶ “158” of the complaint, and refer all questions of law to the Court for adjudication.

159. Deny the allegations contained in ¶ “159” of the complaint, and refer all questions of law to the Court for adjudication.

160. Deny the allegations contained in ¶ “160” of the complaint, and refer all questions of law to the Court for adjudication.

161. Deny the allegations contained in ¶ “161” of the complaint, and refer all questions of law to the Court for adjudication.

COUNT I

162. As and for a response to the allegations contained in ¶ “162” of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ “1” through “161” of the complaint, as though they were fully set forth herein.

163. Deny the allegations contained in ¶ “163” of the complaint, and refer all questions of law to the Court for adjudication.

164. Deny the allegations contained in ¶ “164” of the complaint, and refer all questions of law to the Court for adjudication.

165. Deny the allegations contained in ¶ “165” of the complaint, and refer all questions of law to the Court for adjudication.

166. Deny the allegations contained in ¶ “166” of the complaint, and refer all questions of law to the Court for adjudication.

167. Deny the allegations contained in ¶ “167” of the complaint, and refer all questions of law to the Court for adjudication.

168. Deny the allegations contained in ¶ “168” of the complaint, and refer all questions of law to the Court for adjudication.

169. Deny the allegations contained in ¶ “169” of the complaint, and refer all questions of law to the Court for adjudication.

170. Deny the allegations contained in ¶ “170” of the complaint, and refer all questions of law to the Court for adjudication.

171. Deny the allegations contained in ¶ “171” of the complaint.

172. Deny the allegations contained in ¶ “172” of the complaint, and refer all questions of law to the Court for adjudication.

173. Deny the allegations contained in ¶ “173” of the complaint, and refer all questions of law to the Court for adjudication.

174. Deny the allegations contained in ¶ “174” of the complaint, and refer all questions of law to the Court for adjudication.

175. Deny the allegations contained in ¶ “175” of the complaint.

176. Deny the allegations contained in ¶ “176” of the complaint, and refer all questions of law to the Court for adjudication.

177. Deny the allegations contained in ¶ “177” of the complaint, and refer all questions of law to the Court for adjudication.

178. Deny the allegations contained in ¶ “178” of the complaint, and refer all questions of law to the Court for adjudication.

179. Deny the allegations contained in ¶ “179” of the complaint, and refer all questions of law to the Court for adjudication.

180. Deny the allegations contained in ¶ “180” of the complaint, and refer all questions of law to the Court for adjudication.

181. Deny the allegations contained in ¶ “181” of the complaint, and refer all questions of law to the Court for adjudication.

182. Deny the allegations contained in ¶ “182” of the complaint, and refer all questions of law to the Court for adjudication.

183. Deny the allegations contained in ¶ “183” of the complaint, and refer all questions of law to the Court for adjudication.

184. Deny the allegations contained in ¶ “184” of the complaint, and refer all questions of law to the Court for adjudication.

185. Deny the allegations contained in ¶ “185” of the complaint, and refer all questions of law to the Court for adjudication.

186. Deny the allegations contained in ¶ “186” of the complaint, and refer all questions of law to the Court for adjudication.

187. Deny the allegations contained in ¶ “187” of the complaint, and refer all questions of law to the Court for adjudication.

188. Deny the allegations contained in ¶ “188” of the complaint, and refer all questions of law to the Court for adjudication.

189. Deny the allegations contained in ¶ “189” of the complaint, and refer all questions of law to the Court for adjudication.

190. Deny the allegations contained in ¶ “190” of the complaint, and refer all questions of law to the Court for adjudication.

191. Deny the allegations contained in ¶ “191” of the complaint, and refer all questions of law to the Court for adjudication.

FIRST AFFIRMATIVE DEFENSE

192. Plaintiff’s complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

193. The individual defendants are entitled to absolute immunity.

THIRD AFFIRMATIVE DEFENSE

194. The individual defendants are entitled to qualified immunity.

FOURTH AFFIRMATIVE DEFENSE

195. Plaintiff’s procedural due process claim is barred by the availability of state law remedies.

FIFTH AFFIRMATIVE DEFENSE

196. Plaintiff has failed to mitigate her damages.

SIXTH AFFIRMATIVE DEFENSE

197. Plaintiff's claims against the Peekskill defendants are barred because plaintiff cannot demonstrate that any of their actions caused plaintiff to suffer damages.

SEVENTH AFFIRMATIVE DEFENSE

198. Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

199. Plaintiff's damages were caused or contributed to by ineffective assistance of counsel at all stages of Jeffrey Deskovic's prosecution.

NINTH AFFIRMATIVE DEFENSE

200. Plaintiff's damages were caused or contributed to by professional legal malpractice committed by Jeffrey Deskovic's counsel at all stages of plaintiff's prosecution.

TENTH AFFIRMATIVE DEFENSE

201. Plaintiff's damages were caused or contributed to by a conflict of interest on the part of the attorneys representing Jeffrey Deskovic during his prosecution.

ELEVENTH AFFIRMATIVE DEFENSE

202. Plaintiff's damages were caused or contributed to by the fact that the attorney representing Jeffrey Deskovic in connection with a possible *habeas corpus* petition committed professional malpractice.

TWELFTH AFFIRMATIVE DEFENSE

203. Jeffrey Deskovic's arrest and detention by defendants was lawful, privileged, and authorized by New York State CPL. § 140.10.

THIRTEENTH AFFIRMATIVE DEFENSE

204. Defendants had probable cause to arrest Jeffrey Deskovic.

FOURTEENTH AFFIRMATIVE DEFENSE

205. The injuries, losses, damages, and occurrences alleged in plaintiff's complaint were the result of an independent and intervening cause or causes over which the answering defendants had no control or right to control and in no way participated.

FIFTEENTH AFFIRMATIVE DEFENSE

206. If plaintiff has been injured and damaged as alleged in the complaint, such injury and damage were caused and contributed to by plaintiff's own conduct, negligence, carelessness, or want of care; and, if it be determined that plaintiff is entitled to recovery herein as against answering defendant, such recovery should be apportioned between plaintiff and answering defendant according to their relative responsibility therefor.

SIXTEENTH AFFIRMATIVE DEFENSE

207. If plaintiff has been damaged or injured as alleged in the complaint, and such damage or injury was not sustained solely as a result of plaintiff's own negligence, carelessness, culpable conduct, or want of care, such damage and injury were brought about by the negligence, carelessness, culpable conduct, want of care, and intentional acts of third parties over whom the answering defendants had no control and for whose negligence, carelessness, want of care, and intentional criminal acts the answering defendant is not responsible.

SEVENTEENTH AFFIRMATIVE DEFENSE

208. If any liability is found as against answering defendants, this liability will constitute fifty percent (50%) or less of all liability assigned to all parties liable, and, as such,

the liability of answering defendants to plaintiff for non-economic loss shall be limited, and shall not exceed answering defendants' equitable share, as provided in C.P.L.R. Article 16.

EIGHTEENTH AFFIRMATIVE DEFENSE

209. Defendants had reasonable cause to believe that Jeffrey Deskovic had committed the crime for which plaintiff was arrested and charged.

NINETEENTH AFFIRMATIVE DEFENSE

210. Plaintiff was not deprived of any constitutional or civil rights pursuant to any policy, practice, custom, or procedure of the City of Peekskill.

TWENTIETH AFFIRMATIVE DEFENSE

211. Plaintiff's claim is frivolous.

**AS AND FOR A FIRST CROSS-CLAIM
AGAINST DEFENDANTS
WESTCHESTER COUNTY, DANIEL
STEPHENS, LOUIS ROH, GEORGE
BOLEN, AND MILLARD HYLAND,
DEFENDANTS ALLEGE:**

212. If plaintiff sustained any injuries as alleged, other than through her own negligence, and if the answering defendants are found liable to plaintiff for any portion of those damages, then such liability shall derive from the carelessness, recklessness, negligence or intentional acts, or commissions or omissions, on the part of the co-defendants Westchester County, Daniel Stephens, Louis Roh, George Bolen, and Millard Hyland, without any carelessness, recklessness, negligence or intentional acts, or commissions or omissions on the part of the answering defendants and, accordingly, the answering defendants are entitled to common-law and/or contractual indemnification over and against

co-defendants Westchester County, Daniel Stephens, Louis Roh, and Millard Hyland for the amount of any such award.

**AS AND FOR A SECOND CROSS-
CLAIM AGAINST DEFENDANTS
WESTCHESTER COUNTY, DANIEL
STEPHENS, LOUIS ROH, GEORGE
BOLEN, AND MILLARD HYLAND,
DEFENDANTS ALLEGE:**

213. If plaintiff sustained the damages in the manner and at the time and place alleged through any carelessness, recklessness, negligence or intentional acts, or commissions or omissions other than plaintiff's own, then said damages were sustained in whole or in part by reason of the carelessness, recklessness, negligence or intentional acts, or commissions or omissions on the part of co-defendants Westchester County, Daniel Stephens, Louis Roh, and Millard Hyland, and, if any judgment is recovered herein against the answering defendants then the answering defendants would be damaged thereby and would be entitled to contribution on the basis of apportionment of responsibility for the alleged occurrence and entitled to judgment over and against co-defendants Westchester County, Daniel Stephens, Louis Roh, George Bolen, and Millard Hyland, for all or part of any verdict or judgment that plaintiff may recover against the answering defendant, together with costs, disbursements and attorneys' fees for this action.

Dated: Mineola, New York
July 2, 2008

MIRANDA SOKOLOFF SAMBURSKY
SLONE VERVENIOTIS, LLP
Attorneys for Defendants CITY OF
PEEKSKILL, DAVID LEVINE, THOMAS
McINTYRE, and WALTER BROVARSKY

By: 
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